(1) (3)

BEFORE THE M.P. STATE ADMINISTRATIVE TRIBUNAL, ~~JABALPUR~~ Bench Raipur

O.A. No. 986 of 97 CGP(S) 25/06

Applicant : Satyadev Rai S/o Jagan nath Rai Kanha
Retired Sub Inspector (Radio).
Village Katsari, Post Office
Kadipur, Distt. Sultanpur (U.P).

Vs

Respondents : 1. State of Madhya Pradesh
Through Secretary, Ministry
of Home Affairs, Vallabh
Bhawan, Bhopal (M.P).

2. Senior Superintendent of Police
(Radio), M.P., Bhopal (M.P).

3. Superintendent of Police (Radio)
Zone Bilaspur, Distt. Bilaspur
(M.P).

4. Joint Director, Accounts & Pension,
Bilaspur (M.P).

ORIGINAL APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985

(40)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.**

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**WRIT PETITION (S.) NO.25 OF 2006**

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| Petitioner | : | Satyadev Rai |
| | versus | |
| Respondents | : | State of Madhya Pradesh (now Chhattisgarh) and others |

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Present : Mr. V.S.Tiwari, counsel for the petitioner.
Mr. V.V.S.Moorthy, Deputy Advocate General with Mrs. Anju Ahuja, Deputy Government Advocate for the respondents/State.

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**ORDER**
(Passed on 15th Day of December, 2006)

The petitioner was employed as Constable on 20-12-1957. The petitioner voluntarily resigned from the post which was accepted with effect from 1-3-1968. Thereafter, after a break of about three years, the petitioner was appointed afresh provisionally on temporary basis by order dated 2-2-1971 (Annexure A-1). The petitioner thereafter was promoted on the post of Sub-Inspector (Radio) and retired from service on 31-5-1994 on attaining the age of superannuation.

2. This petition is by way of transfer from the State Administrative Tribunal, wherein the application was filed in December, 1999 and the same was numbered as Original Application No.986 of

1999. On dissolution of the State Administrative Tribunal, this original application was transferred to this Court and re-numbered as Writ Petition (S.) No.25 of 2006.

3. The petitioner has filed this petition claiming pension on the basis of Rule 26 of the Madhya Pradesh/Chhattisgarh Civil Services (Pension) Rules (henceforth 'the Pension Rules') that the period before 2-2-1971 be also counted for grant of pension. Rule 26 of the Pension Rules reads as under :-

> "26. **Forfeiture of service on resignation.** – (1) Resignation from a service or post entails forfeiture of past service:
>
> Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with prior permission, another appointment, whether temporary or permanent, under the State Government, where service qualifies.
>
> *Explanation.* – When resignation from a service or post, other than resignation covered by the proviso to the above sub-rule is submitted and accepted or deemed to have been accepted, the past service is forfeited and such a person does not remain entitled to any leave. If he is reappointed, his appointment shall be treated as fresh appointment for all purposes. The period of service prior to resignation may, however, be allowed to count for pension only by condonation of interruption, if the conditions in rule 28 are fulfilled. Grant of any kind of leave for the period of interruption is not proper and no attempt should be made to review the

Service prior to resignation by grant of any kind of leave for the period of interruption.

(2) Interruption in service in a case falling under the provision to sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the Government servant."

4. Explanation to Rule 26 of the Pension Rules provides for forfeiture the period of service prior to resignation to be counted for pension only by condonation of interruption if the conditions in Rule 28 are fulfilled. Relevant provisions of Rule 28 of the Pension Rules read as under :-

"28. **Condonation of interruptions in service.** – (1) The Departments of Government in consultation with the Finance Department may, by order, condone interruptions in the service of a Government servant :

Provided that –

(i) the interruptions have been caused by reasons beyond the control of the Government servant;

(ii) the total service excluding one or more interruptions, if any, is not less than five years duration; and

(iii) the interruption, including two or more interruptions, if any, does not exceed one year.

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service."

Rule 28 of the Pension Rules provides that the department concerned in consultation with the Finance Department may, by order, condone interruptions in the service of a Government servant provided that the interruptions have been caused by reasons beyond the control of the Government servant, the total service excluding one or more interruptions, if any, is not less than five years duration, and the interruption, including two or more interruptions, if any, does not exceed one year.

5. Learned counsel appearing for the respondents/State submits that the explanation to Rule 26 of the Pension Rules has been deleted and Rule 28 of the Pension Rules has been substituted by new rule. The explanation to Rule 26 of the Pension Rules was deleted by amendment notification No.38 with effect from 20-10-1995 and Rule 28 of the Pension Rules was modified by amendment notification No.29 with effect from 1-12-1995. The cause of action in this petition arose prior to the amendment of the rules. Thus, the present amended Rule 26 of the Pension Rules and the substituted Rule 28 of the Pension Rules would not be applicable to the present case.

6. Admittedly, in the present case, the conditions prescribed in Rule 28 of the Pension Rules, i.e., the interruptions caused by

reasons beyond the control of the Government servant is not available to the petitioner. Even otherwise, it is not a mandatory clause, it is directory.

7. Learned counsel appearing for the respondents/State submits that the interruption in service has not been condoned by the State Government as prescribed under Rule 28 of the Pension Rules. In absence of condonation of interruption, as prescribed under Rule 28 of the Pension Rules, the petitioner cannot take advantage of Rule 26 of the Pension Rules for reckoning the prior service of the petitioner for the purpose of the pension.

8. For the reasons aforementioned, this petition is dismissed. No order as to costs.

**Sd/-**
**Satish K.Agnihotri**
**Judge**

Gopal